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Supreme Court of the United States

OCTOBER TERM, 1953.

No. 739

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD.
Petitioner-Appellant Below

versus

V. J. MITCHELL and VOLA EVELYN PULLEN,
Respondents-Appellees Below

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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SUBJECT INDEX

	PAGE
I. QUESTION PRESENTED	2
II. JURISDICTION AND OPINIONS BELOW	3
III. SUMMARY STATEMENT OF MATTER INVOLVED	3
IV. REASONS RELIED ON FOR ALLOWANCE OF WRIT	5
V. CONCLUSION	8
VI. APPENDIX	9
A. Declaratory Judgments Act (26 U.S.C. 2201)	9
B. Rule 57 of the Federal Rules of Civil Procedure	9

LIST OF AUTHORITIES

Cases:	
Aetna Casualty & Surety Co. v. Yeatts, et al., 99 F. 2d. 665 (CA 4-1938)	2
Aetna Life Ins. Co. of Hartford, Conn. v. Martin, et al. ,108 F. 2d. 824 (CA 8-1940)	2, 7
Anderson v. Aetna Life Ins. Co. of Hartford, 89 F. 2d. 345 (CA 4-1937)	7
Brillhart v. Excess Insurance Company, 316 US 491 (1942)	5, 6
Carbide & Carbons Chemicals Corp. v. United States Industrial Chemicals, Inc., 140 F. 2d. 47 (CA 4-1944)	7
Chicago Furniture Forwarding Co. v. Bowles, 161 F. 2d. 411 (CA 7-1947)	7

LIST OF AUTHORITIES—(Continued)

PAGE

Cases—(Continued)

Creamery Package Mfg. Co. v. Cherry-Burrell Corporation, 115 F. 2d. 980 (CA 3-1940).. 7

Crosley Corporation v. Westinghouse Electric & Manufacturing Co., 130 F. 2d. 474 (CA 3-1940) 7

Franklin Fire Insurance Co. v. Johnson, 157 F. 2d. 653 (CA 10-1946) 2, 4, 5, 6

Guardian Life Ins. Co. of America v. Kortz, 151 F. 2d. 582 (CA 10-1945) 6

Maryland Casualty Co. v. Faulkner, 126 F. 2d. 175 (CA 6-1942) 2, 3, 5

Meredith vs Winter Haven, 320 US 228 (1943).. 4, 5

Milwaukee Gas Specialty Co. v. Mercoid Corp., 104 F. 2d. 589 (CA 7-1939) 7

Standard Accident Ins. Co. v. Meadows, 125 F. 2d. 422 (CA 5-1942) 3

Statutes:

28 USC 1254(1) 3

28 USC 2201 ..... 2, 9

La. Rev. Stat. 22:655 3

Miscellaneous:

Rule 57, Federal Rules of Civil Procedure 2, 7, 9

Borchard, Declaratory Judgments (2d. Ed.) ... 7

"Developments in the Law", 62 Harvard Law Review 7

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner seeks issuance of a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit sustaining the action of the District Court for the Eastern District of Louisiana in denying the jurisdiction of that court to an applicant for declaratory relief; and petitioner respectfully shows:

I

QUESTION PRESENTED

The novel and important question of law presented for determination in this proceeding is:

> May a federal court refuse to entertain jurisdiction over an application for declaratory relief under Section 2201 of the Judicial Code because a suit which might involve some of the same issues is filed in a state court after jurisdiction of the federal court has been invoked?

This court, by express rule, and the courts of appeal in repeated opinions, have announced that "existence of another adequate remedy does not preclude a judgment for declaratory relief".[1] Yet, the rule established in this case has the effect of depriving suitors of relief by declaratory judgment in the federal courts on mere subsequent activation of another possible remedy in the state courts.

To preserve the integrity of the Congressional grant of relief to suitors themselves, under the Declaratory Judgments Act, it is of utmost importance that the bounds of discretionary jurisdiction of the federal courts in actions thereunder be defined decisively by this court. This case presents a question which will serve that urgent purpose.

[1] Rule 57, Federal Rules of Civil Procedure; Franklin Fire Insurance Co. v. Johnson, 157 F. 2d. 653 (CA 10-1946); Maryland Casualty Co. v. Faulkner, 126 F. 2d. 175 (CA 6-1942); Aetna Life Insurance Co. of Hartford, Conn. v. Martin, et al., 108 F. 2d. 824 (CA 8-1940); Aetna Casualty & Surety Co. v. Yeatts, et al., 99 F. 2d. 665 (CA 4-1938).

II

JURISDICTION AND OPINIONS BELOW

The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

The opinion of the district court was rendered on May 20, 1953 and is not reported. The opinion of the court of appeals was rendered on March 31, 1954 and has not yet been reported.

III

STATEMENT OF THE MATTER INVOLVED

Petitioner seeks a declaration that its policy of insurance, issued to Southern Equipment & Tractor Company, does not afford public liability coverage to defendant Mitchell, and that defendant Pullen has no action to recover against petitioner under the policy, for the death of her husband allegedly caused by Mitchell's negligence.[2] The complaint further seeks a declaration that petitioner is under no duty to defend Mitchell in any action which defendant Pullen might institute against him by reason of her husband's death.[3]

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[2] La. Rev. Stat. 22:655 permits an injured party to sue the tortfeasor's liability insurer without first obtaining judgment against the tortfeasor.

[3] Unless a prejudgment of this issue is permitted, petitioner runs the risk of abandoning the coverage issue or aggravating such damages as the insured may claim. Use of the declaratory procedure in cases of this kind is classic. Maryland Casualty Co. v. Faulkner, et al., *supra*, note 1; Standard Accident Ins. Co. v. Meadows, 125 F. 2d. 422 (CA 5-1942).

The complaint was filed on January 5, 1953.[4] More than three weeks later, defendant Pullen filed a suit for damages in the state court joining Mitchell, as the alleged tortfeasor, and petitioner as his alleged insurer. On March 9, 1953, Maryland Casualty Company intervened as a plaintiff in the state court action to recover workmen's compensation benefits paid Mrs. Pullen on account of her husband's death.[5]

No answer was ever filed in the declaratory proceeding,[6] nor has petitioner filed an answer in the state court. With the cases in this posture, the federal court first refused to dismiss the action for declaratory relief;[7] then on rehearing stayed further action;[8] and finally dismissed the suit when petitioner complained that suspension deprived it not only of declaratory relief but of the right to appeal from the refusal to grant it.[9]

On appeal, the court of appeals affirmed the lower court on the assumption, nowhere supported by the record, that the case could be "settled better in the state court".[10] No

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[4] A prior suit by Mrs. Pullen against petitioner in the state court was removed, but Mrs. Pullen voluntarily dismissed before answer.

[5] This intervention in the state court, three months after petitioner filed its suit in federal court and after petitioner had filed a motion for summary judgment in federal court, was assigned by the district court as a ground for reversal of its previous decision and for dismissal of the declaratory action. Petitioner submits that the same reasons which preclude refusal of federal jurisdiction because a later state-court case is filed, apply equally to this phase of the litigation.

[6] Petitioner's motion for summary judgment, based on the policy, was argued and submitted but never granted or denied because the court chose to dismiss the action as an exercise of discretion.

[7] The court rested its decision on Meredith v. Winter Haven, 320 US 228 (1943) and Franklin Fire Insurance Co. v. Johnson, *supra* note 1. R. 22. The first case held that federal jurisdiction should be denied only when clear policy militates against its use. In the second, it was held that declaratory relief should not be denied by a federal court because a later state case has been filed. The procedural details of the latter case are strikingly similar to those of the case at bar.

[8] R. 48. No reason assigned.

[9] R. 51. Oral reasons assigned, R. 52.

[10] R. 69.

reasons were given, nor was it stated what criteria were invoked in judging desirability.

IV

REASONS RELIED ON FOR ALLOWANCE OF WRIT

While Congress did not give suitors an absolute right to be heard under the Declaratory Judgments Act, it is not to be assumed that the grant was solely one of power to the courts.[11] Implicit in the statute is the recognition, at least, of a limited right in the applicant.[12] Petitioner submits that to preserve the Congressional purpose, a suit for declaratory relief should be entertained unless it is shown clearly that some public or judicial policy militates against it. This analysis would be consonant with the prior pronouncements of this court in Rule 57, in *Brillhart v. Excess Insurance Company*,[13] and in *Meredith v. Winter Haven*.[14]

Instead of presuming that a plaintiff is entitled by Congressional grant to a hearing in the absence of clear

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[11] "Undoubtedly, the trial court is vested with rather wide discretion in determining whether or not it will exercise existing jurisdiction in cases of this kind . . . But it is a judicial discretion, subject to review, and must be exercised in accordance with legal principles." Franklin Fire Ins. Co. v. Johnson, *supra*, note 1, 157 F. 2d. at p. 656.

[12] "The Congress having conferred upon Federal Courts the power to grant declaratory relief in an appropriate case, the right to it is not lightly to be denied". Maryland Casualty Co. v. Faulkner, *supra*, note 1, 126 F. 2d. at p. 178.

[13] 316 US 491, holding that before a declaratory action is dismissed, it should be demonstrated by careful inquiry that its retention will serve no useful purpose.

[14] "The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford to suitors an opportunity in such cases, at their option, to assert their rights in the federal rather than in the state courts". 320 US 328, 334.

policy to the contrary, the court below apparently held that declaratory relief will not be granted without an affirmative showing by a plaintiff that no other form of relief is open to it. This court needs to explain the operation of the presumptions to be followed by the district courts in exercising their discretion in taking or declining jurisdiction. Petitioner submits that in weighing the Congressional purpose against the possible reasons for judicial forbearance, an imbalance has resulted from disproportionate emphasis on the latter by some of the lower federal courts.

The conclusion adopted by the court below that the issues in the cases are identical in both courts, and that the state court can better adjudicate them is, at best, speculative.[15] The scope of the issues to be developed in each court could not have been scrutinized since no answer has been filed, and no issue has been joined as between the parties to this proceeding in either suit.

The court below did not find that no useful purpose would be served by this declaratory action. It merely held —without stated reasons—that the matter could be settled better in the state court. This assumption could have grown out of nothing more than the fact that there had been filed in a state court, an action which might involve similar issues.[16]

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[15] There seems to have been far more before the district court in Brillhart v. Excess Insurance Co. when it was dismissed than there is here, yet the majority of this court remanded that case for further study.

[16] In Franklin Fire Ins. Co. v. Johnson, *supra*, note 1, a similarly superficial conclusion by the trial court was rejected. Cf. Guardian Life Ins. Co. of America v. Kortz, 151 F. 2d. 582 (CA 10-1945).

If the decision below be carried to its ultimate conclusion, it would abrogate the principle of Rule 57 of the Federal Rules of Civil Procedure "that the existence of another remedy does not preclude a judgment for declaratory relief". Applicants for declaratory judgments will have to proceed at the risk of useless expense and effort because some other remedy may always be invoked tardily, and plaintiff be deprived *ex post facto* of the relief held out to him by the Act of Congress and Rule 57.[17]

To avoid this result, the Courts of Appeals for the Fourth and Eighth Circuits have held squarely that when a federal court is first seized of jurisdiction in a declaratory action, it will not relinquish its jurisdiction because a later state-court action involving the same issues is filed.[18]

The decision of the Fifth Circuit in the instant case, therefore, poses a direct inter-circuit conflict.[19]

It is submitted that this court should define and clarify the scope of judicial discretion in the entertainment of jurisdiction under the Declaratory Judgments Act as affected by the subsequent filing of other litigation.

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[17] "If the federal declaratory action precedes the institution of the state action, relief should generally be granted. For even if the issues presented were the same as those raised in the later state action, denying relief would mean that the right to a declaration in federal courts would be nullified by commencement of a subsequent state action . . ." "Developments in the Law", 62 Harvard Law Rev. 787, 815.

[18] Anderson v. Aetna Fire Ins. Co. of Hartford, 89 F. 2d. 345 (CA 4-1937); Aetna Life Ins. Co. of Hartford v. Martin, 108 F. 2d. 824 (CA 8-1940); and Carbide & Carbons Chemicals Corp. v. United States Industrial Chemicals, 140 F. 2d. 47 (CA 4-1944). For the same rule as between federal courts see Crosley Corporation v. Westinghouse Electric & Manufacturing Co., 130 F. 2d. 474 (CA 3-1942), writ denied 317 US 681; Creamery Package Mfg. Co. v. Cherry-Burrell Corporation, 115 F. 2d. 980 (CA 3-1940); and Milwaukee Gas Specialty Co. v. Mercoid Corp., 104 F. 2d. 589 (CA 7-1939). Chicago Furniture Forwarding Co. v. Bowles, 161 F. 2d. 411 (CA 7-1947) *contra*.

[19] Compare Borchard, Declaratory Judgments (2d. Ed.) pp. 353, 656, in which the position of the Fourth and Eighth Circuits is supported.

V

CONCLUSION

The decision below represents a departure from the established jurisprudence, poses an inter-circuit conflict and emaculates the effectiveness of a Congressional statute. To preserve the Declaratory Judgments Act as functional legislation, it is important that this court review the decision of the court below.

Respectfully submitted,

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VI

APPENDIX

A

Declaratory Judgments Act

(Excerpt)

In a case of actual controversy within its jurisdiction, except with respect to Federal Taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought . . .

28 U.S.C. 2201

B

Rule 57 of the Federal Rules of Civil Procedure

(Excerpt)

The procedure for obtaining a declaratory judgment pursuant to Title 28, U.S.C., § 2201, shall be in accordance with these rules . . . The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.